IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 5265 OF 2007

Bhagwa Mahal Co-op.Hsg. Sty.ltd.... Petitioner

versus

Bharat K. Pawar & ors..... Respondent.

Shri A.Z.Mookhtiar for the petitioner
Shri M.C.Dixit for respondent.

CORAM; A.P. DESHPANDE, J.
DATED; 18TH JULY, 2007

P.C.;

1. The present petitioners are the opponents in a dispute filed by the respondent before the Co-operative Court. By filing the dispute the respondents have challenged the election of the Managing Committee of the society. The trial court framed issues and one of the issues framed is to the following effect.

> "Do opponents prove that dispute is likely to be dismissed for non-joinder of necesssary parties".

The trial has already commenced and I am informed that the matter has been adjourned on last four dates for cross examination of the disputent's witnesses by the

present petitioners. It appears that the petitioners have belatedly moved an application for framing of a preliminary issue. The trial court has rejected the prayer to try the said issue as a preliminary issue for the reason that the dispute has already reached the stage of trial and the trial court is expecting a expeditious disposal of the dispute itself. The trial court has also held that the said issue raises a mixed question of facts and law, and hence it would be appropriate to decide the issue along with other issues.

2. The learned counsel for the petiitoner seeks to rely upon a judgment of a learned Single Judge of this Court in **W.P.No.4383/05.** Relying on the povisions of Rule 3 of Order 15 the learned Single Judge has held that the court is entitled to decided the preliminary issue, if in its discretion,the court finds that a finding touching the preliminary issue can be recorded. The ratio laid down in the said judgment has no applicability to the facts of the present petition.

3. Perused the order. No interference with the same is called for. The writ petiiton is thus summarily dismissed.

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